IN THE

Supreme Court of the United States

October Term, 1963

No. 240

AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA, a California corporation, EASON MONROE,

Petitioners,

vs.

BOARD OF EDUCATION OF THE CITY OF LOS ANGELES,

Respondent.

On Petition for A Writ of Certiorari to the Supreme Court of the State of California.

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINION BELOW

The opinion of the California Supreme Court is reported in 59 Adv. Cal. 215, 28 Cal. Rptr. 709 (Pet. for Writ, Appx. "A").

QUESTION PRESENTED

Whether Board of Education of the City of Los Angeles can require applicants for the use of school property to file a "Statement of Information" as required by its Rule 1316, which reads as follows:

> "1316. Statement of Information. 'Each person or group requesting the use of the premises for a Civic Center Activity shall, as a condition for the issuance of the permit, file the following statement:.
>
> " 'The undersigned states that, to the best of his knowledge, the school property for use of which application is hereby made will not be used for the commission of any act which is prohibited by law, or for the commission of any crime including, but not limited to, the crime specified in Sections 11400 to 11401 of the California Penal Code. I certify (or declare) under penalty of perjury that the foregoing is true and correct.' "

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

The First Amendment to the United States Constitution provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 10557 of the Education Code of the State of California provides:

> "The use of any public schoolhouse and grounds for any meeting is subject to such reasonable rules and regulations as the governing board of the district prescribes and shall in nowise interfere

with the use and occupancy of the public schoolhouse and grounds, as is required for the purposes of the public schools of the State."

Section 16558 of the Education Code of the State of California provides:

"The management, direction, and control of the civic center is vested in the governing board of the school district."

Section 16559 of the Education Code of the State of California provides:

"The governing board of the school district shall make all needful rules and regulations for conducting the civic meetings and for such recreational activities as are provided for in this chapter (commencing at Section 16551) and which aid, assist, and lend encouragement to the activities."

Rule 1316 of the Los Angeles Board of Education provides:

"1316. Statement of Information. Each person or group requesting the use of the premises for a Civic Center Activity shall, as a condition for the issuance of the permit, file the following statement:

"'The undersigned states that, to the best of his knowledge, the school property for the use of which application is hereby made will not be used for the commission of any act which is prohibited by law, or for the commission of any crime includ-

ing, but not limited to, [illegible] crime specified in Sections 11400 to 11401 of the California Penal Code. I certify (or declare) under penalty of perjury that the foregoing is true and correct.' "

STATEMENT OF THE CASE

Petitioner's Statement of the Case (Pet. for Writ. pp. 5-6) adequately sets forth the factual background of this case.

I.

THE DECISION OF THE CALIFORNIA SUPREME COURT IS NOT IN CONFLICT WITH PRIOR DECISIONS OF THIS COURT.

Petitioner's claim that respondent's Rule 1316 is unconstitutional is based on three major premises: that the rule constitutes an unconstitutional abridgement of free speech and assembly; that the rule subverts the presumption of innocence and inverts the burden of proof; and that the rule violates due process due to its alleged vagueness.

In a unanimous decision the Supreme Court of California discussed and refuted point by point each contention. Respondent submits that this decision is correct and does not raise the specter of Federal-State decisional conflict.

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[2] A fourth point raised by Petitioners in the court below that Respondent is barred from further legislation in the field by reason of state preemption, is apparently not being raised here.

a. Rule 1316 constitutes a proper exercise of the authority of a local board of education to determine in advance that proper use will be made of public school facilities. It is not an unconstitutional prior restraint on speech or assembly.

Respondent's Rule 1316 is a result of the authority given it by the state Legislature to prescribe and enforce reasonable regulations regarding the use of school property (See: California Education Code, Secs. 16557, 16558 and 16559). It is submitted that this regulation is eminently reasonable.

On its face or as applied here, Rule 1316 does not concern itself with the content of proposed speech as such.[2] There is no requirement that an applicant for the use of school property submit in advance and for a predetermination of its acceptability, what is to be said or performed on the premises. It does not put into the hands of the school authorities the discretion, unbridled or otherwise, to deny any particular use because of official disapproval of the use or of the applicant himself.

What it does require is that the applicant censor itself; that in advance of use, the applicant assure the authorities that it does not intend to knowingly com-

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[2]This factor completely distinguishes this case from the first A.C.L.U. case *American Civil Liberties Union v. Board of Education*, 55 Cal. 2d 167, cert. denied 368 U.S. 819, relied on by Petitioners in the court below. In that case a California statute which denied the use of school facilities to applicants based solely on criteria involving the applicant's political beliefs was held unconstitutional.

mit any criminal act on school property. Surely this requirement is within the ambit of authority of school officials.

In determining that Rule 1316 was not an unconstitutional prior restraint on speech and assembly, the California Supreme Court relied heavily on this court's recent decision in *Times Film Corp. v. Chicago*, 365 U.S. 43 holding that it was not an unconstitutional abridgement of free speech to require that an exhibitor submit a motion picture film for review prior to public exhibition.[3]

Far from being out of harmony with that recent decision, Respondent's Rule does not even go as far as does that case. For the effect of *Times* is to subject to prior review the actual contents of particular speech to be employed in the future, with the attendant hazards of potential arbitrariness and unreasonableness in application. Here no review or prior disclosure of the contents of speech is required.

The court below pointed out in some circumstances the exercise of free speech is not unfettered.

> "There is a great difference between the exercise of those fundamental rights which do not require prior permit and those which, while they

[3] It is interesting to note that despite the heavy reliance on this case by the court below, not once do Petitioners discuss its applicability or even cite the case to the attention of this court.

may not be denied arbitrarily, require permit or licensing by a public authority." (Pet. for Writ, Ex. "A," p. 8)

Thus Petitioners are confused when they equate First Amendment problems that would be present if Respondent was to require disclosure of connections and affiliations of applicants as a condition of use, (See: Pet. for Writ, f.n. 2 and p. 11) with the situation here presented. For Respondent has requested no examination of the content of speech, exhibited no interest in applicant's qualifications, beliefs or past activities, but merely evidenced a determination to require that its property will be used in a lawful manner.

The California Supreme Court properly held that public school authorities had the right to place reasonable restrictions on the right of assembly in school buildings based solely on use and that Rule 1316 was a proper tool to use in applying such limitations.

b. Rule 1316 neither subverts the presumption of innocence nor inverts the burden of proof.

Petitioners declare that the Rule declares every applicant "presumptively guilty of crime." (Pet. for Writ, p. 14) Not so. Since the Rule is aimed at future conduct, it is totally unrelated to the issue of guilt or innocence of crime. Similarly, since only the applicant's own statement, taken at face value, is requested prior to usage, no further or ultimate burden of proof

is required. Thus the vice of a statutory scheme requiring the carrying forward of the burden of a series of proofs of innocence struck down in *Speiser v. Randall*, 357 U.S. 513, is eliminated. (cf. *Konigsberg v. State Bar of California*, 366 U.S. 36 where a requirement that California State Bar applicants establish a prima facie case of non-advocacy of violent overthrow of government was held proper).

c. Rule 1316 is not vague.

The California Supreme Court thoroughly analyzed the language used in Rule 1316 as well as its effect and determined that the rule's general phraseology with its one specific statutory reference, were within constitutional limitations. Since the Rule is not criminal in nature but rather informative in effect, reasonable certainty in language is all that is required. That certainty is present here since persons are referred to the California Penal Code for particular definitions of what is meant by the words "crime" or "acts prohibited by law."

II.

THE DECISION BELOW IS CLEARLY CORRECT SINCE RULE 1316 IS NOT DESIGNED TO CURB SPEECH.

Despite Petitioners' claims (Pet. for Writ, p. 8) Rule 1316 is not aimed at political advocacy, or for that matter, advocacy of any kind. Here is a regulatory tool which requires no information regarding the applicant himself, requires no disavowal of political belief or membership in any named political party, and requires no associational disclosures. The Rule does not name or by implication identify any group or individuals and bar the doors to such without regard to the lawful or unlawful purpose of the proposed use. In its application, Rule 1316 bars the doors only to those who cannot or will not agree in effect to use school property for lawful purposes. Surely it could not be disputed that separate and itemized limitations upon illegal use would be proper. It is submitted that a single general request made of those who wish to use public property that the proposed use be legal is equally valid.

CONCLUSION

It is submitted that Rule 1316 is a proper exercise of authority by school officials to reasonably control the use to be made of school property. The petition for writ of certiorari should therefore be denied.

Respectfully submitted,

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